

Introduction

The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (referred to as "the Regulations") provide enhanced levels of consumer protection for a range of transaction types, most notably for distance sales and doorstep sales (a common example of the latter being doorstep sales).

The Regulations impose new requirements on traders, including those relating to pre-contract information, cancellation rights, refunds, the imposition of additional charges and confirmation of orders. The Regulations came into force on 13th June 2014 and apply to all traders.

This guide explains the key requirements of the Regulations for traders and makes some practical suggestions for compliance.

Goods, Services and Digital Content

The Regulations address three categories of transaction – those for the sale of goods, the provision of services and the supply of digital content. The "digital content" category is new and refers to content that is *not* supplied on physical media. Under the regulations, digital content can take a range of forms including (but not limited to) apps, software, music, films, video or text. Logically the definition can also be extended to other types of files that are capable of being sold and delivered electronically.

As will be seen below, the Regulations apply to each of those categories. Whether a trader is providing goods, services or digital content, the same general rule is that different rules will apply to each component of the transaction. More detail will be provided in this regard when considering the specific requirements.

1. The Information Requirements

The Regulations set out a long list of information that traders must make available to consumers before a contract is entered into. It is tempting to assume that such information would need to be provided in a particular form, however the Regulations say nothing about the form of the information. It is simply "reasonably expected to know" that the information must be clear and comprehensible. The information listed below would be provided in the context of the contract. The main characteristics of the goods, services or digital content are likely to be provided in the context of the contract. The identity of the trader and contact details one way or another.

Under Schedule 2 of the Regulations, the information must be given or made available to traders in a particular form.

Information	Compliance
1. Main characteristics of the goods, services or digital content.	Should likely be included as a requirement for an e-commerce website under the Regulations. Note that the Regulations do not require the trader to provide the information in a particular form.

		<i>digital content additional detail as to compatibility, system on (see below).</i>
2. Identity of the trader.		<i>ally to a trading name, this is by default on the header of a we suggest, be worth also any name somewhere that is on an “about us” or “contact me goes for the information below.</i>
3. Address and contact details		<i>of the trader, we suggest that d be best put together on a website. The contract details trader’s geographical address e, telephone, fax and email. hone numbers, note the new se of premium rate numbers</i>
4. Address and identity of other trader for whom the trader is acting.		<i>on another’s behalf, the other e provided to consumers.</i>
5. Place of business address of trader and other trader for whom the trader is acting.		<i>with the addresses under point to a place of business where ct the trader to address any ly applicable if the place of t to the address or addresses er 3 and/or 4.</i>
6. Total price (or how the total price will be calculated).		<i>that will generally be included . If the total price is known it played. If it will be dependent c to a customer’s order, for ethod of calculation should be rate in the case of services).</i>
7. Additional delivery charges, other costs, and how they will be calculated.		<i>at we would generally expect ing the order process when a ect any additional items or delivery preferences. As with should be shown and variable plained clearly.</i>
8. Costs where the contract is of indeterminate duration or is a subscription.		<i>on that would likely accompany ducts, services or content and ke the form of a subscription h fees per period and the et out clearly for a customer to</i>
9. Communication costs where not basic rate.		<i>le to distance sales contracts herce but may still apply ers are given the option of se over the telephone or by sales method. If the cost of anything more than the basic st be clearly informed.</i>
10. Payment, delivery and performance arrangements.		<i>e would expect to see included roduct/service/content-specific</i>

S

A

M

P

L

E

S

A

M

P

L

E

	order process, or possibly er should have a clear to pay and how their em, how services will be al content will be made
11. Complaints handling policy.	complaints handling policy e would suggest that having full on a web page would provided that page was easy Traders should take care to age titles are unambiguous are not to “bury” important aints handling policy.
12. Information about the right to cancel.	ling-off period”, the right to nd will vary according to is for goods, services or tail about the right to cancel e information can be made own words or by using model e Regulations. As well as n (and indeed the means to llation form) on a dedicated o suggest including the er’s standard terms and
13. Consumer’s obligation to pay for the return of goods.	involves the sale of goods cels within the cooling-off ault, obliged to pay for their ed and indeed some traders id returns labels or similar e costs themselves. The e minimum standard – there der being more generous.
14. Consumer’s obligation to pay for services provided within the cancellation period.	ail below at 4.5, this applies agreed to the supply of the thin the cooling-off period. ade aware that they will be ces provided up to the point ailed below, one suggestion d be to include a checkbox cess requiring customers to
15. Losing the right to cancel.	5 and 4.6, the right to the an be lost in certain arly in the case of services s with point 14, we would ox acknowledging that the e lost in the appropriate e a clear way of complying uirement.
16. Details of the trader’s legal duty to supply goods in conformity with the contract.	e suggest, be best placed in ms and conditions.

17. Details of after-sales services and guarantees.	...d likely best form part of the presented to the customer at a inform them of the after-sales ntees available (particularly if choose from). If enhanced e that would incur additional ow refrain from using any pre-relation to them.
18. Details of relevant codes of conduct.	...on, we would suggest, should edicated page with clear links
19. Contract duration and conditions for termination.	...of information that we would to form part of the nt details in the context of e-ers should be given clear, of minimum contract periods, ntracts may be renewed or ey can be brought to an end.
20. Minimum contract duration.	...e under point 19. The fact that e minimum contract duration a ver, underlines the importance ation.
21. Details of consumer deposits and financial guarantees.	...ired to pay any form of deposit ould suggest that this forms a r process and is highlighted as
22. Digital content's functionality and (where relevant) protection.	...ve would expect that this m part of the general product he digital content under point wever, be other details that to leave out of product "cluttering up" their web pages ion overload" for customers. ls of additional technical acking, the sending of usage as details of any DRM (Digital used should be provided. We including such details within em of digital content or having rhaps within a website's "help" the information that can be oduct/download page.
23. Digital content's compatibility.	...ation that we would expect to eneral details under point 1. nts and software compatibility ided with respect to digital of course and we wouldn't tute a significant change for
24. Complaint and redress mechanisms.	...bject to some form of out-of-redress mechanism available hensive information should be e would suggest making this e alongside the complaints

STAMPED

S

s under point 11.

As can be seen in the table, the information required by the Regulations in many cases traders will have already provided. It is important to reiterate, however, that information must be easily accessible for consumers – if information is not easily accessible then that information must be easy to find and clearly presented. Also, where contracts are concluded by electronic means, the means of payment accepted must be indicated “clearly and legibly” at the start of the ordering process.

What’s more, certain pieces of information must be provided directly before a customer places an order. This will be particularly important, therefore, where the order process is designed in such a way that the customer is not aware of the information required until they have already placed their order.

- Main characteristics of the goods or services;
- Total price (or how the price will be calculated);
- Additional delivery charges;
- Costs where the contract is for a period of time or is a subscription;
- Contract duration and termination conditions;
- Minimum duration of contracts where applicable.

It is important to note that the trader has an obligation to provide this information when the contract (i.e. the trader’s obligation to pay) is concluded. Even in situations where the trader is not required to pay, however, and especially where the trader is not required to pay, the obligation to pay will be incurred once the trader has received the above-mentioned information. It is therefore important to ensure that the trader is fully informed and that the trader is not misled.

1.1 Information Requirements for Mobile Devices, Micro-transactions and Similar

Some forms of e-commerce are more complex than others. A popular example is that of so-called micro-transactions, which are transactions that take place within apps or websites or – most importantly – through a means of communication. Where a contract is concluded through a means of communication, the information above may be presented differently.

Where space and/or time are limited, the information above need to be provided directly before the contract is concluded.

- Main characteristics of the goods or services;
- Identity of the trader;
- Total price (or how the price will be calculated);
- Additional delivery charges;
- Costs where the contract is for a period of time or is a subscription;
- Information about the trader’s obligations;
- Contract duration and termination conditions.

It is interesting to note that the Regulations are derived from the Consumer Rights Directive (from which the Regulations are derived) justified on the basis that “certain

commerce situations providing the information may be straightforward. Indeed, in many cases, the information for a long time already. It is important to reiterate, however, that information must be easily accessible for consumers – if information is not easily accessible then that information must be easy to find and clearly presented. Also, where contracts are concluded by electronic means, the means of payment accepted must be indicated “clearly and legibly” at the start of the ordering process.

What’s more, certain pieces of information must be provided directly before a customer places an order. This will be particularly important, therefore, where the order process is designed in such a way that the customer is not aware of the information required until they have already placed their order.

- Main characteristics of the goods or services;
- Total price (or how the price will be calculated);
- Additional delivery charges;
- Costs where the contract is for a period of time or is a subscription;
- Information about the trader’s obligations;
- Contract duration and termination conditions.

It is important to note that the trader has an obligation to provide this information when the contract (i.e. the trader’s obligation to pay) is concluded. Even in situations where the trader is not required to pay, however, and especially where the trader is not required to pay, the obligation to pay will be incurred once the trader has received the above-mentioned information. It is therefore important to ensure that the trader is fully informed and that the trader is not misled.

Information Requirements for Mobile Devices, Micro-transactions and Similar

Some forms of e-commerce are more complex than others. A popular example is that of so-called micro-transactions, which are transactions that take place within apps or websites or – most importantly – through a means of communication. Where a contract is concluded through a means of communication, the information above may be presented differently.

Where space and/or time are limited, the information above need to be provided directly before the contract is concluded.

- Main characteristics of the goods or services;
- Identity of the trader;
- Total price (or how the price will be calculated);
- Additional delivery charges;
- Costs where the contract is for a period of time or is a subscription;
- Information about the trader’s obligations;
- Contract duration and termination conditions.

It is interesting to note that the Regulations are derived from the Consumer Rights Directive (from which the Regulations are derived) justified on the basis that “certain

A

M

P

L

E

mobile telephone screens or the fewer characters can be used suggest that the above list is confined space – particularly with

As for the remaining information (above), this must still be available directly in front of them prior to means. We would suggest depending upon how traders do as part of the ordering or purchase

1.2 “Order With An Obligation

This, believe it or not, is the “confirm”, “order”, “complete” and e-commerce. To quote the Regulations

“If placing an order entails a payment, the trader must ensure that the button is labelled in an easily legible manner only with the words ‘order’ or a corresponding unambiguous formula indicating an obligation to pay.”

We would suggest that great care is denied that the wording suggests a nightmare. Clean, simple and complying with the letter of the Regulations is levelled at the Regulations in purchases and the like. Nevertheless we would suggest that some e-commerce

1.3 Failing to Comply

If a trader fails to provide the information of being found to be in breach of specific pieces of information in

- Failing to provide information not being liable for those
- Failing to provide the duration may result in the
- Failing to provide details of cancellation period being deductions from refund right to charge for service
- Failing to provide details of trader, not the customer
- Failing to obtain the customer obligation to pay may be or order; and
- Failing to clearly label also mean that the customer

television sales spots” mean that instances, however, we would information to be presented in a position on the right to cancel.

of the Regulations (as listed but it does not need to be put be “made available” by other page (or a series of pages providing links to those pages

replace the many “buy now”, currently proliferate the world of

“For a similar function, the trader is labelled in an easily legible manner ‘order to pay’ or a corresponding button. Placing the order implies an

with order buttons. It cannot be is an interface designer’s be considerably disrupted by more so can the accusation be e-commerce platforms, in-app potential risks of failing to comply,

outlined above they run the risk of consequences in relation to

can result in the customer

for contracts of indeterminate able for the charges or costs; right to cancel can result in the being denied the right to make and the trader being denied the point of cancellation; returning goods can result in the for those costs; statement that ordering incurs an not being bound by the contract (or similar) button clearly may the contract or order.

2. Confirming the Contract

2.1 Information Requirements

The pre-contract information should be provided again to the customer once the contract has been formed. The information is presented is not prescribed. It does not need to be repeated. As long as the information is there, the presentation of it is up to the trader.

Under the regulations the information must be provided on a “durable medium”. The key word here is “durable”. The point in the future will not be the information at any time (unless it is permanent) and a degree of permanence is thus required. The Regulations suggest including the information in a permanent form. In the case of the sale of goods, the Regulations also suggest that storing the information on a durable medium is sufficient though this would also be true for services. The fact that the customer may not even look at them is irrelevant. Traders must comply with their obligations.

2.2 Time Limits for Confirmation

The Regulations require that the trader provides the confirmation within a reasonable time after the contract is formed. The time should be no later than the time the trader provides the suggestion particularly useful for the performance of those services. The trader should be the best option.

Interestingly, the Regulations would therefore suggest taking an immediate confirmation email of small, separate “items” (e.g. a confirmation email for each item) be preferable to follow the suggestion of providing the information for the customer. The trader should send confirmation emails each time a customer makes a purchase. This seems clumsy and has the potential of being blocked by junk mail. In the absence of more sympathetic official guidance, the trader should follow the law for the time being.

2.3 Failing to Comply

As with the pre-contract information, a trader who fails to comply with the post-contract confirmation requirements may be in breach of contract.

3. Sale of Goods

3.1 Delivery Obligations and

provided again to the customer once the contract has been formed. The information is presented is not prescribed. It does not need to be repeated. As long as the information is there, the presentation of it is up to the trader.

Under the regulations the information must be provided on a “durable medium”. The key word here is “durable”. The point in the future will not be the information at any time (unless it is permanent) and a degree of permanence is thus required. The Regulations suggest including the information in a permanent form. In the case of the sale of goods, the Regulations also suggest that storing the information on a durable medium is sufficient though this would also be true for services. The fact that the customer may not even look at them is irrelevant. Traders must comply with their obligations.

The Regulations require that the trader provides the confirmation within a reasonable time after the contract is formed. The time should be no later than the time the trader provides the suggestion particularly useful for the performance of those services. The trader should be the best option.

Interestingly, the Regulations would therefore suggest taking an immediate confirmation email of small, separate “items” (e.g. a confirmation email for each item) be preferable to follow the suggestion of providing the information for the customer. The trader should send confirmation emails each time a customer makes a purchase. This seems clumsy and has the potential of being blocked by junk mail. In the absence of more sympathetic official guidance, the trader should follow the law for the time being.

As with the pre-contract information, a trader who fails to comply with the post-contract confirmation requirements may be in breach of contract.

Under the Regulations it is the trader's responsibility to deliver the goods to the customer. Subject to any agreement to the contrary, this term is automatically implied.

As for the time limit for delivery, the Regulations require that goods are delivered "without undue delay".

What does "without undue delay" mean? The Regulations interpret this as being no more than 30 calendar days after the date of the transaction). In many cases, this is unlikely to present a problem. Traders go to great lengths to beat their competitors in offering fast delivery options. Nevertheless, there may be certain situations in which this is insufficient. This may be the case, for example, where goods are not in stock.

If the 30 calendar day period is not sufficient, the customer agrees to a longer period, the trader must make an agreement. We would therefore suggest the following (or more in combination):

- Including the longer delivery period in the order confirmation, for example: *"All of our widgets are made to order. It may take up to 60 days to complete your order."*
- Incorporating clear wording into the order process, for example: *"Delivery may take up to 60 days."*
- Adding an additional checkbox requiring customers to express their agreement to a longer delivery period.

The Regulations also refer to "immediate" delivery (i.e. at the time of the transaction), however, this is unlikely to apply in an e-commerce scenario.

3.2 The Passing of Risk in the Sale of Goods

Determining who bears the risk of loss or damage to the goods is important in any sale. The goods will spend a period in the physical possession of the trader.

Under the Regulations it is the trader's responsibility to deliver the goods to the customer who will take possession of them.

This, we would suggest, will be the case in most cases. The Regulations do envisage the trader using their own carrier to deliver the goods. In such circumstances this is not a situation that we can envisage occurring. Nevertheless, it is important to be aware of.

3.3 Failing to Comply

to deliver purchased goods to the customer. Subject to any agreement to the contrary, this term is automatically implied.

unless the trader and customer agree otherwise. The Regulations require that goods are delivered "without undue delay".

ons interpret this as being no more than 30 calendar days after the contract is formed (i.e. the date of the transaction). This is unlikely to present a problem. Traders go to great lengths to beat their competitors in offering fast delivery options. Nevertheless, there may be certain situations in which this is insufficient. This may be the case, for example, where goods are not in stock.

fore, it is important that the trader makes an agreement. We do not, however, define such a period. The following as possible means of making such an agreement (or more in combination):

uct-specific information. For example, the trader could state: *"All of our widgets are made to order. It may take up to 60 days to complete your order."*

times in the delivery options.

adding a checkbox requiring customers to express their agreement to a longer delivery period that exceeds 30 calendar days.

agreed time" for delivery is, in effect, immediate (i.e. at the time of the transaction), however, this is unlikely to apply in an e-commerce scenario.

or damage with respect to the goods is important in any sale. The goods will spend a period in the physical possession of the trader.

risk until the goods come into the physical possession of the customer or another person identified by the trader. The Regulations do not require the trader to deliver the goods to the customer who will take possession of them.

st majority of cases, however, the trader will use their own carrier to deliver the goods. In such circumstances this is not a situation that we can envisage occurring. Nevertheless, it is important to be aware of.

If the trader fails to deliver goods in accordance with the agreement to a longer delivery period, the customer may terminate the contract immediately (in writing or orally, though we would recommend in writing) if any of the following apply:

- The trader has refused to deliver the goods within the agreed period;
- Delivery of the goods within the agreed period is not defined in the Regulations and the trader has not defined the circumstances at the time of the agreement; or
- The customer expressly agreed to a longer delivery period, but the trader has failed to deliver the goods within another agreed period.

Customers may, in such circumstances, terminate the contract. In the event of termination, the trader must reimburse the customer any and all payments made by the customer.

Instead of outright termination, the trader may find this difficult to practice if goods have been delivered. In such cases, the customer may only reject them in their entirety. The trader must not be rejecting only part of them without the customer's agreement.

As in the case of termination, the trader must reimburse the customer any and all payments made by the customer.

4. Cancellation Rights

In distance selling transactions (see the Regulations for notes) consumers will have, in addition to the right of withdrawal, a right of cancellation. This period is set at 14 calendar days for goods, services or digital content.

During the cooling-off period, the trader must not require the customer to give reasons for cancellation (though the trader may wish to provide the *optional* facility to do so as this can be helpful in improving your business).

Traders are required by the Regulations to provide a model cancellation form to their customers (the form is included in the Regulations). The Regulations also state that traders can provide their own cancellation forms alongside the model form. This, however, is not recommended as it may only confuse matters. Implementing the model form is the best practice. For example, asking for feedback on the cancellation process would seem to be the most sensible option.

NB: There are certain goods and services which are wholly or partially exempt from the Regulations, particularly when it comes to digital content. Please refer to point 6 at the end of this document for more detail.

4.1 The Cancellation Period

As noted above, while the duration of the cancellation period is set at 14 calendar days, when it begins and ends is not defined in the Regulations.

As not obtained the customer's agreement to a longer delivery period, the customer may terminate the contract immediately (in writing or orally, though we would recommend in writing) if any of the following apply:

Delivery of the goods within the agreed period was essential ("essential" circumstances). The trader's agreement will be based upon the circumstances at the time of the agreement; or

Delivery within 30 days (or within another agreed period) is essential.

Customers may, in such circumstances, terminate the contract. In the event of termination, the trader must reimburse the customer any and all payments made by the customer.

Instead of outright termination, the trader may find this difficult to practice if goods have been delivered. In such cases, the customer may only reject them in their entirety. The trader must not be rejecting only part of them without the customer's agreement.

As in the case of termination, the trader must reimburse the customer any and all payments made by the customer.

For the purposes in these guidance notes, the cancellation or "cooling-off" period is set at 14 calendar days according to the type of sale – i.e. goods, services or digital content.

During the cooling-off period, the trader must not require the customer to give reasons for cancellation (though the trader may wish to provide the *optional* facility to do so as this can be helpful in improving customer feedback and your business).

Traders are required by the Regulations to provide a model cancellation form to their customers (the form is included in the Regulations). The Regulations also state that traders can provide their own cancellation forms alongside the model form. This, however, is not recommended as it may only confuse matters. Implementing the model form is the best practice. For example, asking for feedback on the cancellation process would seem to be the most sensible option.

NB: There are certain goods and services which are wholly or partially exempt from the Regulations, particularly when it comes to digital content. Please refer to point 6 at the end of this document for more detail.

As noted above, while the duration of the cancellation period is set at 14 calendar days, when it begins and ends is not defined in the Regulations.

below at 4.5 and 4.6, in certain circumstances, for all intents and purposes, removal of the goods from the cancellation period vary as follows:

- Goods: 14 calendar days from the date the goods come into the physical possession of the person identified by the customer to take possession of them;
- Multiple goods (single contracts, multiple goods delivered separately): 14 calendar days from the date the first of the goods comes into the physical possession of the person identified by the customer to take possession of them;
- Goods (regular deliveries): 14 calendar days from the day on which the goods come into the physical possession of the customer to take possession of them;
- Services: 14 calendar days from the date the contract between the trader and the customer is entered into (with certain exceptions in 4.5); and
- Digital Content: 14 calendar days from the date the contract between the trader and the customer is entered into (with certain exceptions in 4.6).

The Regulations, of course, do not prevent a trader from providing a cooling-off period.

4.2 How Customers Can Cancel

Whilst traders are required to provide a cancellation form by the Regulations (see above), the requirements are significantly more flexible. The customer may use the form or, if they prefer, may make "any other clear statement setting out their intention to cancel the contract".

What might the clear statement qualify as "a clear statement" to enable customers to use these methods?

- Letter;
- Telephone call;
- Returning goods with a receipt;
- Email.

The original legislation from the EU (the Consumer Rights Directive) only refers to the written form. However, given the nature of e-commerce we would find it difficult to see how email could be an acceptable method of communication.

NB: The burden of proof is on the trader to show that they have cancelled within the cancellation period. If the trader fails to ensure that a durable medium is used, please refer back to 4.1.

As to timing, provided the customer communicates before the cancellation period expires and can prove to the trader that they have cancelled the contract within the allowed time, sending an email after the close of business would be sufficient.

cancellation period is, for all intents and purposes, removal of the goods from the cancellation period vary as follows:

which the goods come into the physical possession of the person identified by the customer to take possession of them;

Multiple goods (single contracts, multiple goods delivered separately): 14 calendar days from the date the first of the goods comes into the physical possession of the person identified by the customer to take possession of them;

Goods (regular deliveries): 14 calendar days from the day on which the goods come into the physical possession of the customer to take possession of them;

Services: 14 calendar days from the date the contract between the trader and the customer is entered into (with certain exceptions in 4.5); and
on which the contract between the trader and the customer is entered into (with certain exceptions in 4.6).

cancellation period. There is no requirement for a cooling-off period.

cancellation form by the Regulations (see above), the requirements are significantly more flexible. The customer may use the form or, if they prefer, may make "any other clear statement setting out their intention to cancel the contract".

What might the clear statement qualify as "a clear statement" to enable customers to use these methods?

The original legislation from the EU (the Consumer Rights Directive) only refers to the written form. However, given the nature of e-commerce we would find it difficult to see how email could be an acceptable method of communication.

NB: The burden of proof is on the trader to show that they have cancelled within the cancellation period. If the trader fails to ensure that a durable medium is used, please refer back to 4.1.

As to timing, provided the customer communicates before the cancellation period expires and can prove to the trader that they have cancelled the contract within the allowed time, sending an email after the close of business would be sufficient.

4.3 Cancellation in Sale of Goods

If a customer has received the goods and wishes to cancel, the goods must be returned "without undue delay" and in any case no more than 14 days after the customer has informed the trader that they are cancelling the contract.

In most e-commerce scenarios, goods are returned by post or some other form of mail. Customers are also permitted to hand the goods back in person at the trader's premises. However, if the goods are returned through retail premises, shops, the trader must provide the option of returning goods purchased online to a retail store.

Under most circumstances, the trader is responsible for the cost of returning the goods. However, in certain circumstances, the trader may be able to pass on the cost to the customer. For example, if the same brand may in fact be sold in both online and offline channels, such a scenario, however, the trader must provide the option of returning goods purchased online to a retail store.

Who, then, is responsible for the cost of returning the goods? Under normal circumstances, the customer is responsible for the cost of returning the goods. Many traders, however, extend this to a free (i.e. no cost) returns option. This is not a requirement, but we would certainly recommend it as a way to build customer goodwill.

It is also important to note that the trader is responsible for the cost of providing the pre-contract information as set out above).

As for where the customer returns the goods, the Regulations consider a number of scenarios but our focus is on the trader providing a clearly labelled returns address, thus making it clear to the customer that they can return the goods to the trader.

There may be cases where a trader is not required to accept the goods. When dealing with certain types of goods (e.g. perishable goods), traders may choose to deal with their customers in ways in which traders may find it more or desirable to offer to collect the goods. If the trader chooses to do this, then they must. Other rules apply to so-called "off-premise" sales (e.g. door-to-door sales), but they are not applicable to distance selling (e-commerce falls).

4.4 Cancellation in Sale of Goods

Here again the phrase "without undue delay" and in any case no more than 14 days after the customer has informed the trader that they are cancelling the contract.

- The day on which the trader receives the goods or the day on which the customer provides the goods back to the trader (whichever is the earlier).
- If the trader has offered to collect the goods, the day on which the customer informs the trader of their wish to cancel.

What if the goods have not yet been returned? If the customer has already been paid for the goods, the trader must provide the option of returning goods purchased online to a retail store.

Returning Goods

When the customer exercises their right to cancel, the goods must be returned "without undue delay" and in any case no more than 14 days after the customer has informed the trader that they are cancelling the contract.

In most e-commerce scenarios, goods are returned by post or some other form of mail. Customers are also permitted to hand the goods back in person at the trader's premises. However, if the goods are returned through retail premises, shops, the trader must provide the option of returning goods purchased online to a retail store.

Under most circumstances, the trader is responsible for the cost of returning the goods. However, in certain circumstances, the trader may be able to pass on the cost to the customer. For example, if the same brand may in fact be sold in both online and offline channels, such a scenario, however, the trader must provide the option of returning goods purchased online to a retail store.

Who, then, is responsible for the cost of returning the goods? Under normal circumstances, the customer is responsible for the cost of returning the goods. Many traders, however, extend this to a free (i.e. no cost) returns option. This is not a requirement, but we would certainly recommend it as a way to build customer goodwill.

It is also important to note that the trader is responsible for the cost of providing the pre-contract information as set out above).

As for where the customer returns the goods, the Regulations consider a number of scenarios but our focus is on the trader providing a clearly labelled returns address, thus making it clear to the customer that they can return the goods to the trader.

There may be cases where a trader is not required to accept the goods. When dealing with certain types of goods (e.g. perishable goods), traders may choose to deal with their customers in ways in which traders may find it more or desirable to offer to collect the goods. If the trader chooses to do this, then they must. Other rules apply to so-called "off-premise" sales (e.g. door-to-door sales), but they are not applicable to distance selling (e-commerce falls).

Refunds

When the customer exercises their right to cancel, the goods must be returned "without undue delay" and in any case no more than 14 days after the customer has informed the trader that they are cancelling the contract.

The day on which the trader receives the goods or the day on which the customer provides the goods back to the trader (whichever is the earlier). If the trader has offered to collect the goods, the day on which the customer informs the trader of their wish to cancel.

What if the goods have not yet been returned? If the customer has already been paid for the goods, the trader must provide the option of returning goods purchased online to a retail store.

requirement would still apply a
14 calendar days after the d
cancel.

Unless a customer agrees ot
same payment method origina
in the first place. The same
refunded with vouchers if they
agreed to accept a refund in th

What about deductions? It ma
goods from their packaging, h
made from refunds, but only in

Customers are permitted to h
their nature, characteristics a
the kind of handling that wou
permissible. Handling or use
make a suitable deduction fro
value of the goods as a resul
refund (the trader may, for exa
them that the goods have be
suggest not issuing a refund
be required to pay the suitable

A further important point to no
service has been selected (i.e.
trader is not obliged to refund a

Remember that if the custom
the trader will lose the right to

4.5 Cancellation in Service C

As noted above under 4.1, in
removed. Service contracts at

Taking the simplest scenario f
until after the 14 day cancell
unaffected and the customer is

If, however, services are to
becomes more complicated.
14 days or whether they are
expressly request that the serv
is essential or the trader w
customer will remain free to c
service has been fully perform

In such transactions, then, we
way that the transaction cannot
worded checkbox, for example
cancellation period.

4.5.1 When services can be

ould be refunded no later than
n the trader that they wish to

it refund all sums due via the
t when they paid for the goods
rs. A customer can only be
chers or if they have expressly

he customer has removed the
ome way. Deductions *can* be

extent necessary to establish
gulations give the example of
d in a shop to show what is
however, entitles the trader to
t reflects the reduction in the
e sum isn't deducted from the
soon as the customer informs
or this very reason, we would
en received) the customer will

me form of “premium” delivery
s standard delivery costs), the
of standard delivery.

ormed of their right to cancel,

ation period can be effectively
which this may occur.

d but is not due to commence
sed, the cancellation right is
e 14 days.

cellation period, the situation
ces are to extend beyond the
that time, the customer *must*
ncellation period is over. This
ificant disadvantage and the
ay a single penny, even if the

ng the order process in such a
an express request (a suitably
t the service begins within the

the cooling-off period

In this scenario, once the service is provided, the customer loses the right to cancel and must pay for the service. The Regulations, however, subject to the express request requirement, require the customer also acknowledges that the service is fully performed by the trader.

4.5.2 Where services begin within a cancellation period

When the services begin but the customer exercises their right to cancel, the customer must pay for the services as provided up to that point.

In such cases, the period for which the services begin and ends at the point where the trader informs the trader that they are no longer required.

The total due from the customer should be calculated in proportion to the services provided and therefore represent a relative price.

The Regulations make further provisions in relation to the price of services. We are uncertain whether the Regulations decide that their original price is excessive. We are uncertain whether the Regulations decide that the customer must pay the price they would assume) agreed to the services at the time convincing any trader that they are no longer required. Perhaps the Regulations here is to ensure that prices are not excessive in the first place. By taking the Regulations into account, customers are getting a good deal. In the event that any dispute arises, the Regulations will also be protected in the circumstances considered here.

4.6 Digital Content and the Cancellation Period

NB: This section applies to the digital content which is provided as a service, i.e. that which is provided as a service, opposed to being supplied on a tangible medium. In cases where the content is supplied on a tangible medium, the rules pertaining to the sale of goods apply.

Once again, as noted in 4.1, the Regulations provide that the trader must remove the digital content. This is of particular importance for digital content means that it is not possible for anybody wants to wait 14 days for the trader to remove the photo or music file. Surprisingly, the Regulations do not provide for this.

It is important to note, however, that the Regulations do not provide for the cancellation period when supplied on a tangible medium.

As with services, the customer must pay for the supply of the digital content to begin within the cancellation period.

the customer loses the right to cancel and must pay for the service. The Regulations, however, subject to the express request requirement, require the customer also acknowledges that the service is fully performed by the trader.

period

When the customer exercises their right to cancel, the customer must pay for the services as provided up to that point.

The period for which the services begin and ends at the point where the trader informs the trader that they are no longer required.

The total due from the customer should be calculated in proportion to the services provided and therefore represent a relative price.

The Regulations make further provisions in relation to the price of services. We are uncertain whether the Regulations decide that their original price is excessive. We are uncertain whether the Regulations decide that the customer must pay the price they would assume) agreed to the services at the time convincing any trader that they are no longer required. Perhaps the Regulations here is to ensure that prices are not excessive in the first place. By taking the Regulations into account, customers are getting a good deal. In the event that any dispute arises, the Regulations will also be protected in the circumstances considered here.

not "not on a tangible medium" but "not on a tangible medium" as some other electronic form as a disc or memory stick. In cases where the content is supplied on a tangible medium, the rules pertaining to the sale of goods apply.

Once again, as noted in 4.1, the Regulations provide that the trader must remove the digital content. This is of particular importance for digital content means that it is not possible for anybody wants to wait 14 days for the trader to remove the photo or music file. Surprisingly, the Regulations do not provide for this.

It is important to note, however, that the Regulations do not provide for the cancellation period when supplied on a tangible medium.

As with services, the customer must pay for the supply of the digital content to begin within the cancellation period.

doing so, they will lose the
acknowledgement must be co
contract (in a “tangible medium

We would suggest that check would again be the preferred agreement.

4.6.1 What is “Digital Content”?

In short, “Digital Content” is a “form” (as defined in the Regulations) of information on a web page.

It is also important to consider the definition. As has already been discussed, physical media and could therefore be a direct download, a link to some other location at the user's convenience (e.g. a file hosted on a third party download location, streaming service, etc.).

4.6.2 Digital Content and Support

The information presented through the digital content being made available is a range of content made available as the content is made available and an acknowledgement must be obtained.

As for automatic renewals of express requirements. We would like to see a customer to read an explanation of the right to cancel the case that the cancellation is at the beginning.

4.6.3 Cancelling Before Acceptance

In practice there may or may not be a gap between the order and the digital content being delivered. If there is a gap, this will, under the current law, create a window of opportunity for a customer to cancel. If we would suggest that this is a gap that is not available to customers. If a customer has already otherwise accessed the content, it would make good sense to allow them to cancel in the context of auto-renewal. We would suggest that we cancel the automatic renewal and not deliver the content any more.

From the trader's perspective, incurred any cost. Fairness, n would therefore suggest that allowed.

Moreover, such consent and part of the confirmation of the

te point in the order process
d obtaining such consent and

produced and supplied in digital form. Therefore, it could be anything from a simple text file to a complex operating system.

ery that would fall within the
y anything that doesn't involve
web pages behind a "paywall",
e the content can be accessed
ccount" page) a link to a third-
attachment.

text of an individual piece of
ever the rules apply equally to
a subscription model. As long
the customer's consent and
t to cancel.

regulations do not set out any
at the terms and conditions set
ally subscribe contain a clear
by default, it would seem to be
stances occurs only once – at

Terms

the customer completing their purchase or otherwise accessed by them. The Regulations, provide a small part of the regulations. In any case, (practical) something that is made available, downloaded, streamed, viewed or otherwise accessed for, we would suggest that it is particularly, this would be useful for the customer may simply forget to delete it or has no intention of accessing

nefitted and the trader has not
se reading of the Regulations,
ited circumstances should be

Moreover, in some cases, payment may be reasonable to offer access to the content. As with the small print, we suggest that if the benefit to the trader is small, little will be lost by allowing the Regulations provides for. While bolstering customer relations and competitive as e-commerce marketing tool!

4.6.4 Digital Content or Services

If a customer is paying for digital content or streaming, the situation appears to be clear-cut. The customer receives that content. There are other scenarios where websites may charge for access but do not provide a digital product.

Clearly such a scenario will still involve images, text, information and data in which it is designed to be used.

There is nothing in the Regulations preventing a trader having cancellation rights for digital content and service aspects as separate entities, but this would require the trader to treat both the trader and their customer as separate entities. If such offerings as services, products or digital content. On the face of it, this may seem reasonable, but what the service is and how much it costs. If, for example, the trader is providing a news service, one could argue that the service has been provided as the customer reads their first article. If the trader is providing a service that has been "provided" as the customer has made contact with another user. It is fortunate enough to be in a position where it is prejudicial to the trader to treat the customer's subscription fee, as justifiable.

If, on the other hand, the service is only provided "in full" within the cancellation period, the trader may be able to argue that the service has been provided.

The Regulations are regrettable, but we would consider that this allows traders to advise care and caution when customers are paying for something that is not a "service".

4.7 Cancellation and Ancillary

NB: The following applies only to digital content and services and does not extend to goods.

subscription model is used, it is not clear if a customer *has* accessed the content. As discussed above, we would suggest that if the benefit to the trader is small, little will be lost by allowing the minimum standard in the Regulations provides for. While bolstering customer relations and competitive as e-commerce marketing tool!

digital content and is receiving digital content and is receiving digital content. Where, then, do these sit?

in the form of the website itself, the nature of the site and the way it is used to provide a service.

trader in such a situation from having cancellation rights for digital content and service aspects as separate entities, but this would require the trader to treat both the trader and their customer as separate entities. If such offerings as services, products or digital content. On the face of it, this may seem reasonable, but what the service is and how much it costs. If, for example, the trader is providing a news service, one could argue that the service has been provided as the customer reads their first article. If the trader is providing a service that has been "provided" as the customer has made contact with another user. It is fortunate enough to be in a position where it is prejudicial to the trader to treat the customer's subscription fee, as justifiable.

customer could be viewed as one who has received the service. It may be preferable, at least in some cases, to treat the service as a "service".

but on the positive side, we would consider that this allows traders to advise care and caution when customers are paying for something that is not a "service".

that provide for goods and/or services.

In some e-commerce transactions, additional services are offered alongside the main contract. Examples include insurance, extended warranties, maintenance contracts, etc.

Under the Regulations, if the main contract is cancelled, so too will be any ancillary contracts. The cancellation of the main contract occurs automatically without any additional action required of the trader.

In some cases the parties to the ancillary contract may be the same as the parties to the main contract, i.e. the trader and the customer. If, however, a third party is involved (say, for example, an insurance company), it is the trader's responsibility to inform that third party that the main contract has been cancelled. The customer need do no more than cancel the main contract.

4.7.1 Refunds and Costs

The Regulations do not set out who is responsible for refunding the customer under any ancillary contracts. The guidance suggests that the obligation lies with the party to the ancillary contract. If the payment under an ancillary contract was made by the customer, it is the trader that must issue the refund. If the payment was made by a third party, it is the responsibility to issue the refund.

In many cases, however, we would expect the trader, at least, all payments go to (or are made by) the trader. In that case, the trader should be the one to refund the customer. The trader should then obtain the corresponding refund themselves from the third party.

As is covered above, there may be additional costs incurred by a customer for returning goods and for any shipping charges. The same rules apply to refunds under ancillary contracts.

5. Restrictions on Additional Charges

The Regulations set out a number of restrictions on additional charges being levied on customers. Key restrictions include:

- The requirement to obtain the customer's prior consent for additional charges. In practical terms, this means that traders offering additional services or other items must obtain the customer's consent. It would also be valuable to ensure that customers understand that they are consenting to additional charges.
- A bar on premium rates for additional charges under an existing contract.

6. Exempt and Partially Exempt Contracts

The Regulations do not apply to certain types of contracts. That any traders whose goods or services fall within the following obtain legal advice is strongly recommended.

- Gambling (within the meaning of the Gambling Act 2005);

that additional services are offered alongside the main contract. Examples include insurance, extended warranties, maintenance contracts, etc.

Under the Regulations, if the main contract is cancelled, so too will be any ancillary contracts. The cancellation of the main contract occurs automatically without any additional action required of the trader.

In some cases the parties to the ancillary contract may be the same as the parties to the main contract, i.e. the trader and the customer. If, however, a third party is involved (say, for example, an insurance company), it is the trader's responsibility to inform that third party that the main contract has been cancelled. The customer need do no more than cancel the main contract.

The Regulations do not set out who is responsible for refunding the customer under any ancillary contracts. The guidance suggests that the obligation lies with the party to the ancillary contract. If the payment under an ancillary contract was made by the customer, it is the trader that must issue the refund. If the payment was made by a third party, it is the responsibility to issue the refund.

In many cases, however, we would expect the trader, at least, all payments go to (or are made by) the trader. In that case, the trader should be the one to refund the customer. The trader should then obtain the corresponding refund themselves from the third party.

As is covered above, there may be additional costs incurred by a customer for returning goods and for any shipping charges. The same rules apply to refunds under ancillary contracts.

The Regulations set out a number of restrictions on additional or premium charges being levied on customers. Key restrictions include:

- The requirement to obtain the customer's prior consent for additional charges. In practical terms, this means that traders offering additional services or other items must obtain the customer's consent. It would also be valuable to ensure that customers understand that they are consenting to additional charges.
- A bar on premium rates for additional charges under an existing contract.

The Regulations do not apply to certain types of contracts. That any traders whose goods or services fall within the following obtain legal advice is strongly recommended.

- Gambling (within the meaning of the Gambling Act 2005);

- Banking, credit, insurance (unless such services are covered by the Regulations);
- Rights in immovable property;
- Rental of residential accommodation;
- Construction of new (or conversion) buildings;
- Supply of food or drink (other than by milkmen);
- Package travel and holidays;
- Timeshares;
- Vending machines or “pay on use” contracts;
- A single connection by cable or other means;
- A single connection by telephone;
- Sale of goods by way of

The Regulations apply only in certain cases and, as with the above, we would strongly recommend that you seek fully or partly within any of the categories listed by your solicitor:

- Passenger transport services;
- Off-premises contracts (e.g. doorstep sales) for the supply of goods or services for domestic use and other domestic purposes;
- Supply of medicinal or pharmaceutical products;
- Day-to-day transactions for the supply of goods or services for domestic use and other domestic purposes, thus outside the scope of the Regulations;
- Goods or services which cannot be returned or cancelled.
- Customised goods or services where the consumer has specified the goods or services and in such cases there is no right to cancel.
- Rapidly deteriorating goods;
- Vin en primeur or similar contracts;
- Sealed goods. In such cases where the seal has been broken and the goods cannot be returned, there is no right to cancel.
- Sealed audio, video or other recordings. In such cases where the seal has been broken, there is no right to cancel.
- Goods which become perishable after delivery. The right to cancel is lost after delivery.
- Urgent repairs or maintenance;
- Newspapers and magazines;
- Contracts concluded at a public auction;
- Contracts for the supply of goods or services, catering or other services, if the contract provides for a specific date or time for performance. In such cases there is no right to cancel.

S

A

M

P

L

E

s, investments or payments for goods or services to contracts which are not covered by such rights);

(conversion) buildings; milkmen);

premises”;
 established by a consumer;

priority of law.

s and, as with the above, we would strongly recommend that you seek fully or partly within any of the categories listed by your solicitor:

B: this applies to off-premises contracts for the supply of goods or services outside the scope of e-commerce.

s by prescribers or similar; off-premises transactions and is not covered by distance selling methods); in such cases there is no right to cancel.

consumer's specification. In such cases there is no right to cancel.

There is no right to cancel.

There is no right to cancel. If the seal has been broken and the goods cannot be returned, there is no right to cancel.

In such cases, where the seal has been broken, there is no right to cancel.

other goods after delivery. The right to cancel is lost after delivery.

There is no right to cancel.

There is no right to cancel.

transport of goods, vehicle rental for hire or pleasure activities, if the contract provides for a specific date or time for performance. In such cases there is no right to cancel.